REPLY

OF

THE CHEROKEE NATIONAL COUNCIL

TO

The Propositions of the Dawes Commission

IN REGARD TO

CHANGE OF GOVERNMENT FOR THE CHEROKEE NATION.

WASHINGTON, D. C.:
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CHEROKEE NATIONAL COUNCIL

TO

The Propositions of the Dawes Commission on Change of Government for Cherokee Nation.

Whereas the National Council has been informed by the Principal Chief that he has received certain propositions from commissioners appointed by the President of the United States by authority of an act of Congress approved March 3, 1893, which propositions are addressed to the Cherokee people in the terms following, to wit:

"PROPOSITION TO THE CHEROKEES.

The Commission to the Five Civilized Tribes, appointed by the President under section 16 of an act of Congress approved March 3, 1893, propose to treat with the Cherokee Nation on the general lines indicated below, to be modified and extended as may be deemed wise by both parties after discussion and conference.

First. To divide all lands now owned by the Cherokee Nation, not including town sites, among all citizens according to treaties now in force, reserving town sites and minerals for sale under special agreement. Sufficient land for a good home for each citizen to be made inalienable for twenty-five years, or such longer period as may be agreed upon.

Second. The United States to agree to put each allottee in possession of the land allotted to him without expense to the allottee. That is, to remove from the allottee's

land all persons who have not written authority from the allottee to be on the same, executed after the date of the evidence of title.

Third. Town sites, and coal and minerals discovered before allotment, to be the subject of special agreement between the parties, such as will secure to the Nation and to those who have invested in them a just protection and adjustment of their respective rights and interests therein.

Fourth. A final settlement of all claims against the United States.

Fifth. All invested funds not devoted to school purposes, and all money derived from the sale of town sites, coal and minerals, as well as all moneys found due from the United States, to be divided per capita among citizens according to their respective rights under the treaties and agreements.

Sixth. All moneys due the citizens of said Nation, except that devoted to school purposes, to be paid per capita to the citizens entitled thereto, by an officer of the United States, to be appointed by the President.

Seventh. A board of three persons, to be agreed upon, to whom shall be referred all questions of citizenship and right to allotment, excepting freedmen, to consist of one member of this Commission and one Cherokee by blood, they to select a third member, wholly disinterested, and in case they shall fail to agree upon such third member, he shall be appointed by the President.

Eighth. A board of three persons, to be agreed upon, to consist of two members of this Commission and one Cherokee by blood, who shall revise the roll of freedmen known as the Wallace Roll, and erase the names of such as may be improperly placed on said roll, and add such as may be entitled thereto, including such as may have been born since that roll was made.

Ninth. If an agreement shall be reached with the Cherokee Nation, a Territorial government may be formed by Congress and established over the Cherokee Nation and such other of the Five Civilized Tribes as may have at the time agreed to allotment of lands and change of government.

Tenth. Such agreement, when made, shall be submitted for ratification to the Cherokee government, and, if ratified by it, shall then be submitted to Congress for approval.

Eleventh. The present tribal government to continue in existence until after the lands are allotted and the allottees put in possession, each of his own land, after which a Territorial government may be established by Congress.

Twelfth. The agreement entered into by the United States in reference to intruders is to be in no way impaired, but is to continue in force and be carried out as originally made, if desired by the Cherokee Nation."

And whereas the Hon. U. S. Commissioners have requested the Principal Chief to obtain a reply from the National Council as soon as practicable: therefore,

Be it enacted by the National Council, That the Principal Chief be, and he is hereby, authorized and requested to make on behalf of the National Council the following statements and representations in reply to the above-recited proposition to the Cherokees from the Hons. Henry L. Dawes, Monteith N. Kidd, and Archibald McKinnon, Commissioners of the United States, and to assure them that the National Council have received and considered the said proposition with the utmost respect, and with a sincere desire to comply with their wishes therein expressed, so far as such compliance may be consistent with the powers vested in the Council by the Cherokee Constitution, and (within those limits) so far as such compliance will, in their judgment, as representatives of the Cherokee people, be compatible with their best interests.

In order to prevent possible misconceptions, and the wrong and injury that might result, the Council would express their understanding of the main object of the Hon. Commissioners to be to obtain the consent of the Cherokees to have a portion of their country allotted to them individually, while they consent also to some disposition of the remainder for their benefit. As one of the inducements to consent to this change of title, it is proposed to make the personal titles inalienable for twenty-five years, or longer, should the parties agree. Upon the reply to be given to the proposition to allot will depend the continuance of the negotiations, since most of the other suggestions of matters for conference are subsidiary to the acceptance of this proposition by the Cherokees. However, if the consent to allot be obtained, it is further proposed, in paragraph eight, that a change of government from Tribal to Territorial shall be either implied to have been consented to with the consent to allot, or such a change will be made a subject for subsequent "discussion and conference." The language of this part of the proposition is not clear upon the matter. The Council would only say, in regard to this and all other suggestions and matters connected with the proposal to allot, that they trust and believe that the Cherokees will in no case be held to have compromised or relinquished any right in their keeping for their people, except upon and after their express acknowledgment to that effect.

This preliminary understanding seems to the Council to be the more especially in place on the present occasion, not only because misconceptions of meaning are frequent between masters of expression, but because of the very great importance to the Cherokees of the matters submitted to them, and because the great body of native Cherokees can only be reached through a translation from English into their own tongue.

In order to be able to comprehend a proposition that is designed to so radically and permanently change the relations of the Cherokees to the United States, the Council will be excused for referring as briefly as may be, but with sufficient exactness, to those provisions of existing treaties which have determined and settled those relations for so many years.

From the year 1785, when the first treaty was made by the United States with the Cherokees, until the year 1830, the United States Government pledged itself from time to time to protect the Cherokee Indians in the enjoyment of their tribal rights, the consideration paid for such promise of protection in each instance being land.

In the year 1830 the United States Government announced its policy of removing the Indian tribes, then located east of the Mississippi river, to west of the river, by an exchange of lands, and authorized the President, in an act of Congress approved on May 28, 1830,—

"To assure the tribe or nation with which the exchange is made that the United States will forever secure and guarantee to them, and their heirs and successors, the country so exchanged with them; and, if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

Under the authority thus given by Congress, the United States, through her duly empowered commissioners, guaranteed their present home to the Cherokee Indians on February 14, 1833, in the words following:

"ARTICLE 1. The United States agree to possess the Cherokees and to guarantee it to them forever, and that guarantee is hereby pledged, of seven millions of acres of land to be bounded as follows, viz: [here follows a statement of the boundaries, which include the country now

owned and occupied by the Cherokees] * * * and letters patent shall be issued by the United States as soon as practicable for the land hereby guaranteed."

On December 29, 1835, the United States confirmed this grant and renewed the pledge of a patent in the words following:

"ARTICLE 3. The United States also agree that the lands above, ceded by the treaty of February 14, 1833, including the Outlet and those ceded by this treaty (the so-called 'Neutral Lands'), shall all be included in one patent executed to the Cherokee Nation of Indians by the President of the United States according to the provisions of the act of May 28, 1830." * * *

According to these decisive treaty pledges and the authority vested by the act of Congress passed in 1830, the President executed a patent to the Cherokee Nation on the 31st day of December, 1839. This patent endowed the Cherokee Nation, their heirs and successors, with the right to "have and to hold forever" the lands described therein, which include every acre now occupied by the Cherokees.

The motives and intentions of the United States and the Cherokees—the one in making the grant and executing the patent, the other in accepting both—are expressed in the first clause of the preamble to the treaty of 1835, viz:

"Whereas the Cherokees are anxious to make some arrangements with the Government of the United States whereby the difficulties they have experienced by a residence within the settled part of the United States under the jurisdiction and laws of the State governments may be terminated and adjusted, and with a view of reuniting their people in one body and securing a permanent home for themselves and their posterity in the country selected by their forefathers without the territorial limits of the State

sovereignties, and where they can establish and enjoy a government of their own choice, and perpetuate such a state of society as may be most consonant with their views, habits, and condition, and as may tend to their individual comfort and advancement in civilization."

The exchange of lands authorized by the act of Congress of 1830, and provided for by these two treaties of 1833 and 1835, was duly made and completed, so far as the Cherokees was concerned, by their removal to their new home in the West. Bitter had been their experience of a "state of society," composed of two races thrown together, in which the weaker was at the mercy of the stronger, and the stronger showed no mercy; but so invincible was their love of country and hope for justice while suffering from oppression that the greater part of the Nation had to be removed by force. Internal dissensions naturally arose to augment the tribe's distress, but were healed by the treaty of August 17, 1846, in which the United States took occasion to declare, in the line of former pledges and guarantees:

"ARTICLE 1. That the lands now occupied by the Cherokee Nation shall be secured to the whole Cherokee people for their common use and benefit. * * *"

The Indian policy of the United States Government at that time was now carried out, which contemplated the acquisition of the Cherokee country east of the Mississippi river, the removal of the tribe to the country west, and the removal of every doubt or suspicion from the minds of the Cherokees that their perfected title to the new country could ever fail to secure them in undisturbed possession of it. There was no more to do in the way of protection, requiring another pledge of honor and good faith, than to formally recognize the immemorial right of the Cherokees as a distinct people to govern themselves,

and to pledge the great power of the Government against any serious interference with that right. This the United States did in unmistakable terms in the treaty of 1835, as follows:

"ARTICLE 5. The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article (including the lands now occupied by the Cherokees) shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they shall secure to the Cherokee Nation the right by their National Councils to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their people or such persons as have connected themselves with them: *Provided* always, That they shall not be inconsistent with the Constitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and also, that they shall not be considered as extending to such citizens and army of the United States as may travel or reside in the Indian country by permission, according to the laws and regulations established by the government of the same.

"ARTICLE 6. They (the Cherokees) shall also be protected against interruption and intrusion of citizens of the United States who may attempt to settle in the country without their consent; and all such persons shall be removed from the same by order of the President of the United States. But this is not intended to prevent the residence among them of useful farmers, mechanics, and teachers for the instruction of Indians according to treaty stipulations."

If there could have been any doubt in the mind of a Cherokee of the sincerity of the General Government in making these emphatic and explicit guarantees, such doubt would have been removed by the article following:

"ARTICLE 7. The Cherokee Nation having already made great progress in civilization, and deeming it important

that every proper and laudable inducement shall be offered to their people to improve their condition as well as to guard and secure in the most effectual manner the rights guaranteed to them in this treaty, and with a view to illustrating the liberal and enlarged policy of the Government of the United States toward the Indians in their removal beyond the territorial limits of the States, it is stipulated that they shall be entitled to a Delegate in the House of Representatives of the United States whenever Congress shall make provision for the same."

It certainly could not have been conjectured by the treaty-making power of that time that, should the rights of the Cherokees to their own country and to their own government be interfered with and placed in the least danger, Congress would authorize Commissioners to suggest as a measure of defence and safety what may be termed voluntary extinction of the tribe, in place of providing the tribe with a delegate in Congress for the purpose of enabling it to "guard and secure its rights in the most effectual manner."

Confiding wholly in the pledges above recited, the Cherokees, in the year 1839, erected their tribal government, under which they have lived and largely prospered ever since, excepting the dark period taken up by the war of secession. The constitution of the government was modelled after that of the United States and the several States—(all being alike republican)—except in one special feature of it which the Cherokees imagine to be not at variance but in perfect agreement in principle with the rest of the instrument. The Council refers to the provision of the Cherokee constitution that makes the lands of the Nation common property, while it empowers the tribal legislature to so regulate the occupancy of the domain as to prevent any one citizen from depriving another of his equal right to its use by means of excessively large or excessively numerous improvements. The Cherokees do

not think that any person has the right to absorb to himself as much land—the gift of the Creator of all, to all equally to enable them with industry to subsist—as his superior abilities, fortune, and opportunities will enable him to do, to the partial or entire exclusion of others equally deserving, equally entitled, but with fewer or no advantages to take of any one. They therefore framed their government so as to prevent any one of their citizens from thus reducing others to an unnatural condition of dependence upon him and such as he for the means of getting a comfortable living. To this leading feature of their constitution the National Council acknowledges their people to be greatly and conscientiously attached—a feature which the Council understand the pending proposition from the Hon. Commissioners to suggest to them to condemn and abandon. Under their government, the possession by one citizen of the Nation of more of the domain belonging to all than the just claims and rights of other citizens authorize him to have can be remedied at any time. But by the government under which the Cherokees are invited to have themselves enrolled as citizens the evil of monopoly of land is, in their view, fostered and made perpetual by the permission given to the strong and fortunate to acquire most if not all the domain, and so reduce the weak and unfortunate—always in the majority—to a condition of dependence.

This explanation is given of the fact that the Cherokees in forming the constitution of their government applied the principle of equal rights to the ownership and use of land as well as to other matters.

The Cherokees were living prosperously when the terrible war of secession disrupted their Nation, blasted their country and suspended their government. At its close new conditions required new arrangements, and the

following additional pledges were given for their permanent security and protection:

"ARTICLE 26. The United States guarantee to the people of the Cherokee Nation the quiet and peaceable possession of their country, and protection against domestic feuds and insurrections and against hostilities of other tribes. They shall also be protected from interruption and intrusion from all unauthorized citizens of the United States who may attempt to settle on their lands or reside in their territory.

"ARTICLE 27. * * * All persons not in the military service of the United States, not citizens of the Nation, are to be prohibited from coming into the Cherokee Nation or remaining in the same, except as herein otherwise provided, and it is the duty of the United States Indian agent of the Cherokees to have such persons not lawfully residing or sojourning therein removed from the Nation as they now are or hereafter may be required by the Indian intercourse laws of the United States."

In the light of the above-quoted declarations and assurances of the United States to the Cherokees, one would be justified, after this lapse of time, in expecting to find them happy, prosperous, and progressive. Such, indeed, is their condition to a great extent. If their situation has its dark side, it is not on account of the making of any engagements, but because engagements have not been kept. The Council refers to the presence and pressure of intruding citizens of the United States whose prompt removal has been pledged again and again, but whose presence among the Cherokees in constantly increasing numbers is sufficient to cause them just alarm for the future of their people. Intrusion again threatens the Nation with evils from which, at different times in its history, the Cherokees have escaped only by the cession of the tracts upon which the intruders were allowed to swarm.

That way of escape is no longer open to the Cherokees as a nation. Even if it were, the United States have pro-

vided the five tribes, including the Cherokees, with a means of defence against intrusion which is wholly effectual when put to its proper use elsewhere, and which was designed to serve the same purpose for the Indians. The Council refers to the letters patent, patent in fee, or grant, as the instrument is variously termed in different treaties and which the Cherokee Nation holds as evidence of impregnable title. With this title in hand, the Cherokees are aware that there is no other or safer country for them within the limits of the United States than this. Without such a title, no country would be safe or secure. Here, therefore, the Nation is destined to survive or become extinct. But if the Nation sinks into oblivion, it will sink under the weight of the intrusion that must have been anticipated by the parties and guarded against by pledges and patent. There is no other possible source of danger, externally, to the tribe, and nothing else is likely to put in jeopardy its internal tranquillity.

Such being the state of things in and with this tribe, the National Council feels compelled to regard the present proposition to the Cherokees to suffer their country to be allotted as a way proposed by the Hon. Commissioners to extricate and permanently free them from the difficulties attending intrusion. In other words, that the United States Government, without declaring their inability to expel intruders from the Cherokee domain while it is held in common, or their determination not to expel them, will guarantee their removal, if the Cherokees will only consent to change their title from common to individual—a change which will certainly admit of some chance to obtain a portion of the land so individualized in ownership—which change of title is to imply or be followed by a change of government also, the Cherokees to be then no longer citizens of the Cherokee Nation, but becoming citizens of the United States.

In reply to this proposition to make so radical and momentous a change in the situation and relations of the Cherokees, the National Council would respectfully call the attention of the Hon. Commissioners to the limits placed upon the powers of the legislature of the Nation by the Constitution of their government.

The second section of the 1st article of the Constitution provides that—

"The lands of the Cherokee Nation shall remain common property."

The title to the land being in common, and so permanently secured, so far as the patent in fee from the United States can secure it to the Cherokees, and the Cherokees having determined and declared in the Constitution of their government that the title shall remain in common, the National Council, as a representative body, do not feel authorized to ask for, or to give their consent to, an allotment of a portion of the Cherokee country, without special authority from their people, especially in view of section 14th of the 3d article of the same Constitution, which provides—

"That the National Council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the Nation, *which shall not be contrary to this Constitution.*"

In the representations which the National Council have made in answer to the proposition of the Honorable Commissioners, the Council have not attempted to discuss the question of the expediency of accepting it, but have only attempted to show the status of the Nation towards the United States as permanently and honorably fixed by the United States themselves, and which status it is now proposed to the Cherokees to abandon for one wholly new and untried. The following quoted article of the Treaty

of 1866 authorizes the National Council to call for an allotment of the whole domain belonging to the Cherokees.

"ARTICLE 20. Whenever the National Council shall request it, the Secretary of Interior shall cause the country set apart for the Cherokees to be surveyed and allotted among them at the expense of the United States."

The proposal to have a portion of the country reserved for the Cherokees allotted now, comes from Hon. Commissioners of the United States weighted with other propositions and conditions of a very grave nature, which, under any circumstances, the Council would not consider themselves authorized to accept without reference to their people for their instruction.

This reference the Council, with the most profound respect, will proceed to make in the form of published copies of the proposition, which will enable the Cherokee people to consider and discuss it among themselves, and, in due time and manner, to express their minds in regard thereto.

Passed the Senate 12, 6, '94.

ROBT. B. ROSS,
Pres't Senate, pro tem.

C. W. WILLEY,
Cl'k of Senate.

Concurred in by the Council December 7, 1894.

V. GRAY,
Speaker Council, pro tem.

J. H. DICK,
Clerk Council.

Approved December 8, 1894.

C. J. HARRIS,
Principal Chief.